

**CLEAN ENERGY CHOICE<sup>®</sup> PROGRAM AGREEMENT**  
**WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND**

This **CLEAN ENERGY CHOICE<sup>®</sup> PROGRAM AGREEMENT** for a WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND (together with any exhibits, schedules and any amendments hereto, each of which is expressly incorporated by reference herein, this "Agreement") is entered into as of August \_\_\_, 2006 (the "Effective Date") by and between (i) Massachusetts Technology Park Corporation ("MTPC"), an independent public instrumentality of The Commonwealth of Massachusetts with a principal place of business at 75 North Drive, Westborough, Massachusetts 01581, administrator of the Massachusetts Renewable Energy Trust Fund (the "RET"), and (ii) Western Massachusetts Electric Company ("WMECo" or "the Company"), a Massachusetts corporation with a principal place of business at 1 Federal Street, Springfield, Massachusetts 01105. MTPC and the Company may hereinafter be referred to individually as a "Party" or referred to collectively as the "Parties."

**W I T N E S S E T H**

WHEREAS, MTPC, in its capacity as the administrator of the RET, has been charged by law with the public purpose of increasing the affordability of new renewable energy and expanding its generation and consumption in Massachusetts, and in furtherance of this public purpose, MTPC has determined to create a environment for the growth and development of the market for energy generated from new renewable generation units;

WHEREAS, in order to support and encourage Massachusetts consumers of electricity to advance the development of new sources of renewable energy in New England, and the public benefits attendant therefrom, through the willing payment of a premium, in excess of their

standard electricity charges, to support the development of new sources of energy derived from renewable resources, MTPC has adopted the **CLEAN ENERGY CHOICE**<sup>®</sup> program (the “MCEC” Program) to create additional choices for consumers who seek to maximize the public benefits to be generated through the application of their volitional premium payments. The MCEC Program has four interrelated elements: (i) it allows Massachusetts consumers of electricity to target their premium payments either to the purchase of certificates from new renewable resources as defined in G.L. c. 25A, § 11f or to a fund to be applied to assist the development of new sources of energy from renewable sources that provide benefits to low income residents or appropriate non-profit agencies located in specified areas; (ii) it provides such additional assurances, safeguards and oversight as are calculated to ensure that premium payments will be applied in their entirety as directed by the consumers; (iii) it allows Massachusetts consumers to choose to have their premium payments recognized as payments made on behalf of the Commonwealth for the public good and as contributions made to RET which qualify as deductible charitable contributions “to or for the use of the state which are used for exclusively public purposes” under Section 170(c)(1) of the Federal Internal Revenue Code of 1986, as amended; and (iv) it is readily amenable to future modifications designed to expand and further optimize consumer choice, including the incorporation of future certificate purchases through RET and matching commitments for certificate purchases from present and future RET resources and complementary state programs.

WHEREAS, in order to provide additional support and encouragement for willing payments and contributions by consumers of electric energy to support the development of new sources of energy derived from renewable resources, either in the form of contributions to or for the use of RET by participants in the MCEC Program or otherwise, MTPC has determined to

make periodic disbursements to Massachusetts cities and towns for clean energy projects and to make benefits available to various organizations for clean energy projects that benefit low income residents and/or appropriate non-profit agencies in communities served by investor-owned distribution companies, based upon the amount of qualifying payments and contributions (the "MCEC Public Good Match Program"), and has budgeted \$800,000 for the MCEC Public Good Match Program to fund the Program through the fiscal year ending June 30, 2007;

WHEREAS, MTPC and the Company have developed the "Western Massachusetts Power of Green Project Fund Program" pursuant to which the Company's Customers will have an option to make voluntary contributions to RET, for deposit into the Western Massachusetts Power of Green Project Fund, which will be used under the control and subject to the direction of MTPC, on behalf of all of the citizens of the Commonwealth, to provide financial assistance for the development of new sources of energy that: (i) are located in the Company's service territory; (ii) are derived from renewable resources; and (iii) provide benefits to low income consumers or appropriate non-profit agencies. Under the Western Massachusetts Power of Green Project Fund Program, MTPC will match the amount of Contributions to the Fund both with transfers of monies to the Fund from the RET and, pursuant to the MCEC Public Good Match Program, with periodic disbursements to those customers' cities and towns for clean energy projects.

WHEREAS, MTPC has obtained a private letter ruling from the Internal Revenue Service regarding the tax treatment of charitable contributions to or for the use of RET made by Massachusetts customers participating in the MCEC Program (the "Private Letter Ruling"), a copy of which is attached to this Agreement as Exhibit A<sub>1</sub> and

WHEREAS, the Parties desire to work together as set forth in this Agreement in order to advance the public purposes served by and to enjoy the benefits of the MCEC Program;

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, MTPC and the Company hereby agree as follows:

#### ARTICLE I. DEFINITIONS

Any capitalized term used in this Agreement and not otherwise defined herein shall have the meaning ascribed to it in the regulations of the Massachusetts Department of Telecommunications and Energy (“DTE”).

“Basic Service” shall mean the service provided by the Company under G.L. c. 164, § 1B(d) pursuant to the provisions set forth in the Company’s tariff, on file with the Department.

“Company” shall mean Western Massachusetts Electric Company

“Contributions” shall mean those premium payments made by individual customers that are designated by said individual customers to be recognized as contributions made to the Commonwealth of Massachusetts for the public good and treated as contributions to RET to be deposited in the Fund and to be used to provide financial support for the development of new sources of renewable energy in the Company’s service territory.

“Customer” shall mean any person, partnership, corporation, or any other entity, whether public or private, who obtains Distribution Service under the Company’s residential tariffs.

“Customer Materials” shall mean any information made available to Customers, directly or indirectly, by the Company relating to the Western Massachusetts Power of Green Program,

the Fund, or to the MCEC Program and Customers' options for participation therein in the form of printed matter, Internet content, or formal oral statements, through mailings or other means of distribution of printed materials, Internet web sites, or electronic or formal meetings.

"Default Service" shall mean the service provided by the Company under G.L. c. 164, § 1B(d) pursuant to the provisions set forth in the Company's tariff, on file with the Department.

"DTE" shall mean the Massachusetts Department of Telecommunications and Energy.

"Distribution Service" shall mean the delivery of electricity to Customers by the Company.

"Effective Date" shall mean the date on which this Agreement is executed

"Full Implementation Phase" shall mean the Western Massachusetts Power of Green Project Fund Program after the implementation by the Company of its new billing system.

"Fund" has the same meaning and is used interchangeably with the term "Western Massachusetts Power of Green Project Fund" as defined hereafter in "Initial Implementation Phase" and shall mean the Western Massachusetts Power of Green Project Fund Program during the period from the Program Commencement Date through the implementation of the Company's new billing system.

"MCEC Program Disclosure Standards" shall mean the MCEC Disclosure Standards, as set forth in Exhibit B.

"MCEC Program" has the meaning set forth in the Preamble to this Agreement.

“MCEC Public Good Match Program” shall mean the program adopted by MTPC in order to provide additional support and encouragement for willing payments and contributions by consumers of electric energy to support the development of new sources of energy derived from renewable resources, either in the form of contributions to or for the use of RET by participants in the MCEC Program or otherwise, MTPC has determined to make periodic disbursements to Massachusetts cities and towns for clean energy projects and to make benefits available to various organizations for clean energy projects that benefit low income residents and/or appropriate non-profit agencies in communities served by investor-owned distribution companies, based upon the amount of qualifying payments and contributions.

“MTC” and “MTPC” shall both mean and be used interchangeably to refer to Massachusetts Technology Park Corporation.

“Participating Customer” shall mean a Customer enrolled in the MCEC Program in order to make Contributions to the Fund.

“Private Letter Ruling” the private letter ruling MTPC has obtained from the Internal Revenue Service regarding the tax treatment of charitable contributions to or for the use of RET made by Massachusetts customers participating in the MCEC Program, a copy of which is attached to this Agreement as Exhibit A;

“Program Commencement Date” shall mean the earlier of the first business day at least sixty (60) days after the Company makes a filing with the DTE seeking approval of the Western Massachusetts Power of Green Project Fund Program, or the date upon which the DTE approves the Western Massachusetts Power of Green Project Fund Program.

“RET” shall mean the Massachusetts Renewable Energy Trust Fund.

“Western Massachusetts Power of Green Project Fund” shall mean the dedicated depository account created by MTPC pursuant to Section 3.01 of this Agreement into which Contributions from Participating Customers and matching transfers by MTPC shall be deposited and maintained until released by MTPC.

“Western Massachusetts Power of Green Project Fund Program” shall mean the Program under which the Company’s Customers are provided an option to make voluntary Contributions to RET, for deposit into the Western Massachusetts Power of Green Project Fund, which will be used under the control and subject to the direction of MTPC, on behalf of all citizens of the Commonwealth, to provide financial assistance for the development of new sources of energy that: (i) are located in the Company’s service territory; (ii) are derived from renewable resources; and (iii) provide benefits to low income consumers or appropriate non-profit agencies located in specific areas. Under the Program, MTPC will match the amount of Contributions to the Fund both with transfers of monies to the Fund from the RET and, pursuant to the MCEC Public Good Match Program, with periodic disbursements to those customers’ cities and towns for clean energy projects.

## ARTICLE II. COMPANY RESPONSIBILITIES

### SECTION 2.01 Western Massachusetts Power of Green Project Fund Program.

The Company shall implement a program pursuant to which its residential customers receiving Default or Basic Service from the Company are provided an option(s) to make contributions to the Western Massachusetts Power of Green Project Fund. During the Initial Implementation Phase, the Western Massachusetts Power of Green Project Fund Program will be launched to a

targeted group of such residential customers, the composition of which shall be agreed upon by the Company and MTPC. During the Full Implementation Phase, the Western Massachusetts Power of Green Project Fund Program will be expanded to include all residential customers then receiving Default or Basic Service from the Company.

SECTION 2.02      Customer Education and Information. The Company shall use reasonable efforts to inform and educate Customers about the Western Massachusetts Power of Green Project Fund Program. The Company shall use reasonable efforts to promote the Western Massachusetts Power of Green Project Fund Program, the Fund, and, as agent for MTPC, to solicit and facilitate Contributions to the Fund. The Company shall develop written materials for distribution to Customers describing the Western Massachusetts Power of Green Project Fund Program, the Fund, the MCEC Program and Customers' options for participation therein. The Company shall establish procedures to receive, and materials to respond to, questions from Customers, by telephone and/or Internet, regarding the Western Massachusetts Power of Green Project Fund Program, the Fund, and the MCEC Program. All Customer Materials shall comply with the MCEC Program Disclosure Standards, as defined in Exhibit B hereto. The Company shall provide drafts of all Customer Materials to MTPC (Attention: Manager, Renewable Energy Markets, Renewable Energy Trust) prior to any distribution thereof and MTPC shall endeavor to review and provide comments on such materials, pursuant to Section 3.07 of this Agreement, in accordance with the schedule requested by the Company. The Western Massachusetts Power of Green Project Fund Program will be promoted by the Company following the schedule of Initial Implementation Phase Promotional Activities as described in Exhibit C and following the Full Implementation Phase Promotional Activities described in Exhibit D.



SECTION 2.03      Enrollment Processing. Acting as the agent of MTPC, the Company shall process Customer requests to participate in the Western Massachusetts Power of Green Project Fund Program according to the enrollment process described in Exhibit E for the Initial Implementation Phase and Exhibit F for the Full Implementation Phase.

SECTION 2.04      Contribution Processing and Billing Matters. Acting as the agent of MTPC, the Company shall, with due diligence, process Contributions to the Fund made by Participating Customers as described in Exhibit E during Initial Implementation Phase and Exhibit F during the Full Implementation Phase. Customer contributions to the Fund made as part of the Western Massachusetts Power of Green Project Fund Program are strictly voluntary and the Company will not pursue collection measures for monies that have been pledged but not paid by Customers.

SECTION 2.05      Billing Accounting and Reporting. The Company shall provide quarterly reports to MTPC ("Quarterly Contribution Reports"), no later than the tenth (10<sup>th</sup>) business day each January, April, July, and October, including the following information for each of the three preceding calendar months:

- (i) the total amount of Contributions pledged by Participating Customers;
- (ii) the total amount of Contributions received by the Company; and
- (iii) the amount of Contributions received by the Company from Participating Customers in each city and town served by the Company.

Such Quarterly Contribution Reports shall be in a format mutually acceptable to both parties. MTPC shall have access to and the Company shall maintain such accounting records concerning Western Massachusetts Power of Green Project Fund Program pledges and Contributions as is necessary to prepare such Quarterly Contribution Reports. The Company shall also provide an

annual report to MTPC including the data necessary for MTPC to provide the reports to Participating Customers required under Section 3.03. The Company shall secure from each Participating Customer any formal consent that may be required to facilitate the preparation and delivery of such reports to MTPC. The Company shall also provide such other reporting to MTPC regarding activities under the MCEC Program as both parties may agree are reasonable, with the cost of preparing such additional reports to be specified in advance by the Company and to be borne by MTPC.

SECTION 2.06      Initial Implementation of Western Massachusetts Power of Green Project Fund Program. The Company and MTPC agree that during the Initial Implementation Phase, the Company will not include Western Massachusetts Power of Green Project Fund pledge and contribution information directly on Participating Customers' electric bills. During the Initial Implementation Phase, the Company will, as described in Exhibit E, hereto, prepare and deliver materials to the Customers described in Section 2.01 with which such customers may indicate their agreement to participate in the Western Massachusetts Power of Green Project Fund Program and send separate checks to the Company for Contributions to Fund.

SECTION 2.07      Full Implementation of Western Massachusetts Power of Green Project Fund Program. The Company and MTPC agree that during the Full Implementation Phase, pledge and contribution information will be included on Participating Customers' electric bills. It is anticipated that the new billing system will be implemented in April 2007, but this date is not firm and, therefore, the Parties understand, subject to MTPC exercising its rights under Section 6.01, that the Full Implementation Phase may not begin in April 2007. In addition to the preparation and delivery of materials to all Customers receiving Default or Basic Service from the Company with which such Customers may indicate their agreement to participate in the

Western Massachusetts Power of Green Project Fund Program and send separate checks to the Company for Contributions to Fund, during the Full Implementation Phase, the Company will, following the process described in Exhibit F, also process contributions by Participating Customers that are not delivered through separate checks but are included with their electric service payments.

### ARTICLE III. MTPC RESPONSIBILITIES

SECTION 3.01        Western Massachusetts Power of Green Project Fund. Prior to the Program Commencement Date, MTPC shall create and then maintain a separate “Western Massachusetts Power of Green Project Fund” account. MTPC shall be responsible for paying the costs of establishing and maintaining this account.

SECTION 3.02        MCEC Disbursements. MTPC will make quarterly transfers to the Fund to match, dollar for dollar, the amount of Participating Customer Contributions received by the Fund during the preceding three months. In addition, under the MCEC Public Good Match Program, the MTPC will make quarterly disbursements to cities and towns in the Company’s service area in amounts equal to the Contributions received by the Fund during the preceding three months from residents of the respective cities and towns for the purpose of funding clean energy projects by those local governments.

SECTION 3.03        Reporting of Contributions. Within 60 days following the end of each calendar year, MTPC will provide a report to each Participating Customer of the amount of Contributions paid by each such Participating Customer during the year. MTPC shall bear the cost of such reports.

SECTION 3.04      Selection of Initial Implementation Phase Project. No later than 30

days after the Program Commencement Date of the Initial Implementation Phase, MTPC shall, after consultation and agreement with the Company, select one project that will be the recipient of financial assistance during the Initial Implementation Phase.

SECTION 3.05      Western Massachusetts Power of Green Program Working Group.

No later than 90 days after the beginning of the Full Implementation Phase, MTPC shall convene and facilitate a Western Massachusetts Power of Green Program Working Group (“Working Group”) to identify, consider, and recommend appropriate projects for MTPC to provide financial assistance from the Fund. The Working Group will draw upon the participation of a broad range of stakeholder groups and will be composed of one representative each from RET, the Company, and one from no more than five such other local stakeholders groups as MTPC and the Company may agree should participate in the Working Group. The Working Group will review applications for financial support and make recommendations to the MTPC regarding the projects to receive financial support from the Fund as well as the amount and terms of such support. In making its recommendations, the Working Group shall limit its consideration to projects that are located in the Company’s service territory, provide direct benefits to low income consumers or appropriate non-profit agencies, involve energy technologies that are eligible for assistance under the provisions of G.L. c. 40J, § 4E(f)(1), and are connected to the grid. The Working Group shall seek to maximize the following benefits resulting from projects that receive financial support from the Fund:

- (1) public goods, such as increased clean energy supply and diversity of energy supply;
- (2) direct benefits, such as having a portion of electricity load be provided by renewable energy technology at no or very low cost to the receiving entity.

SECTION 3.06      Western Massachusetts Power of Green Project Fund Program

Project Grants for Full Implementation Phase. At least once each calendar year, MTPC shall determine the amount to be released from the Fund in the form of grants to provide financial support for new sources of energy from renewable resources as well as select the recipients and establish the terms of such grants. No later than six months after the Commencement of the Full Implementation Phase, MTPC shall select an initial project to receive financial support with a grant from the Fund. In making its determinations on the recipients and the amount of subsequent grants, MTPC shall consider the recommendations made by the Working Group. Notwithstanding the requirement that MTPC consider recommendations by the Working Group and confer with the Company, MTPC retains the sole discretion to determine which projects should receive financial assistance and the terms of such assistance under the Full Implementation Phase. Each year, MTPC shall make reasonable efforts to release monies from the Fund in amounts equal to those deposited in the Fund during the preceding twelve (12) months; provided, however, that nothing in this contract shall create an enforceable obligation that MTPC release any particular amount from the Fund by any date, except that MTPC shall release all of the monies in the Fund as grants no later than twenty-four (24) months after the termination of this Agreement.

SECTION 3.07      Review of Customer Materials and Information Regarding MTPC

Activities. MTPC shall endeavor to review and provide any comments it may have on draft Customer Materials within the schedule requested by the Company. Unless a longer period is specified by the Company, MTPC's review period shall not exceed thirty (30) days and the Customer Materials shall be deemed to have been approved if MTPC fails to provide comments within such thirty (30) day period. Notwithstanding the foregoing, the Parties agree that any

reference to or discussion of the MCEC Program in any Customer Materials shall be subject to the prior written approval of MTPC, signed by MTPC's General Counsel.

#### ARTICLE IV. COMPLIANCE WITH OTHER REQUIREMENTS

SECTION 4.01        DTE Approval. The Company intends to submit this agreement to the DTE for approval pursuant to G.L. c. 164, § 76 and the Parties agree to cooperate and use reasonable efforts to obtain approval by the DTE as well as any other required regulatory actions or approvals. In the event that the DTE disapproves this Agreement, the Parties agree that: if disapproval occurs prior to the Program Commencement Date, this Agreement shall be terminated without further obligation on either Party's part; if, instead, disapproval occurs after the Program Commencement Date, the Western Massachusetts Power of Green Project Fund Program shall terminate, but the Parties will abide by the terms of this Agreement to the extent permitted by the DTE until the processing as directed by the DTE of any transactions that are outstanding or pending at the time of such termination.

SECTION 4.02        Private Letter Ruling. The Parties shall cooperate and use reasonable efforts to cause the Western Massachusetts Power of Green Project Fund Program to comply fully with the requirements set forth in the MCEC Private Letter Ruling, including the representations made in the request for such ruling. Specifically, the Company will review with MTPC any changes to the Western Massachusetts Power of Green Project Fund Program that could affect the MCEC Program prior to implementing any such changes, and will cooperate with MTPC to take reasonable steps to continue the existence and operation of the Western Massachusetts Power of Green Project Fund Program in the event that the conditions of the IRS Private Letter Ruling or MCEC are modified.

SECTION 4.03      Confidentiality. The Parties hereto acknowledge and agree that MTPC shall follow the policy and procedures set forth in Exhibit G, attached hereto. In addition to, and not in limitation of the foregoing, the Company acknowledges and agrees that MTPC (i) is subject to the provisions of the Massachusetts Public Records Act, M.G.L. Chapter 66 (the "Records Act"), which may require MTPC to make certain information available to the public, and (ii) may be compelled to disclose information in response to subpoenas or other compulsory legal processes, court or administrative orders or similar requests or demands for disclosure of information. MTPC will use reasonable efforts to notify the Company in the event that MTPC receives any request for disclosure of information provided to MTPC pursuant to this Agreement under the Records Act, or any subpoena or other compulsory legal process, court or administrative order, or similar request or demand, all as set forth in the policy and procedures attached as Exhibit G.

SECTION 4.04      Program Records; Right to Audit and Copy. During the term of this Agreement and for a period of seven (7) years thereafter, the Company shall maintain accurate records relating to the Western Massachusetts Power of Green Project Fund Program and to the Company's performance of its obligations under this Agreement ("Program Records"). The Program Records shall include, without limitation, the name, address, and account number of each Participating Customer, and the amount of any Contributions under the Western Massachusetts Power of Green Project Fund Program pledged by and the amount of such Contributions paid by each Participating Customer. From time to time during the term of this Agreement and for a period of seven years thereafter, MTPC or its designee shall have the right, subject to an appropriate agreement by MTPC protecting against further disclosure of customer information determined by the DTE to be confidential, at its own expense and during the

Company' normal business hours with 144 hours advance notice, to audit and copy the Program Records; provided, as a further protection against the disclosure of Participating Customer account numbers, the Company may provide to MTPC or its designee another, unique "customer number" instead of Participating Customers' account numbers and MTPC shall accept such a substitution if such a alternate "customer numbers" will not impair the ability or constrain the scope of the audit the Program Records. The Company shall secure from each Participating Customer any formal consent that may be required to facilitate the provision of access by MTPC to such information. The Company shall cooperate with and use reasonable efforts to assist MTPC in the performance of any such audit. In the event of judicial or governmental order or decree, the Company shall, within 144 hours, make copies of the Program Records available to MTPC either at the Company' principal place of business or by forwarding such copies to MTPC, as instructed by MTPC. The Company shall have a reciprocal right to audit the program records of the MTPC as they relate to the Western Massachusetts Power of Green Project Fund Program.

## ARTICLE V. REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 5.01 Compliance with Laws. Each Party represents and warrants that it is, and covenants that it shall remain during the term of this Agreement, in compliance with all laws, tariffs and DTE regulations applicable to this Agreement or to the transactions contemplated hereunder.

SECTION 5.02 Power and Authority; Authorization; Validity. Each Party represents and warrants that: (a) it has the full power and authority to execute, deliver and perform this Agreement; (b) the execution, delivery and performance of this Agreement have



been duly authorized by all necessary corporate or other action by such Party; and (c) this Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.

SECTION 5.03      Performance. Each Party shall exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement, and carry out its duties in accordance with applicable recognized professional standards.

SECTION 5.04      Indemnification by the Company. The Company shall indemnify and hold harmless MTPC, RET and their respective affiliates, and the directors, officers, trustees, employees and agents of each of them from and against any and all damages, costs (including attorneys' fees), fines, penalties and liabilities, in tort, contract or otherwise, resulting from the Company' failure to transfer any Contributions to RET or from the Company's Customer Materials where the Company did not comply with the terms of this Agreement requiring MTPC review and approval of Customer Materials as set forth in Section 2.02.

## ARTICLE VI. TERM AND TERMINATION

SECTION 6.01      Term. Unless otherwise terminated pursuant to the provisions of Section 4.01, this Article VII or by mutual agreement of the Parties, this Agreement shall become effective on the Effective Date and continue in full force and effect for five (5) years or until: (1) mutual agreement by the Parties to terminate the Western Massachusetts Power of Green Project Fund Program; (2) the termination of the MCEC Program (3) in the event that commencement of the Full Implementation Phase, as defined in Section 2.06, is delayed beyond August 31, 2007, upon thirty (30) days written notice by MTPC; provided, however, that either Party may terminate this Agreement upon thirty (30) days written notice in the event that a

reasonable basis exists to conclude that a material adverse change has occurred or is imminent in the tax treatment applicable to the MCEC Program or in state regulations applicable to the Western Massachusetts Power of Green Project Fund Program and that basis is described by that Party in the required written notice. Notwithstanding the foregoing, the Parties agree to abide by all terms of this Agreement until the processing of any transactions that are outstanding or pending at the time of termination.

SECTION 6.02      Termination. Notwithstanding anything to the contrary elsewhere in this Agreement, a Party, by written notice to the other Party (the “Breaching Party”), may terminate this Agreement in whole or in part with respect to such Breaching Party or suspend further performance without terminating this Agreement upon the occurrence of any of the following: (a) the Breaching Party terminates or suspends doing business; (b) the Breaching Party becomes subject to any bankruptcy or insolvency proceeding under federal or state law (unless removed or dismissed within sixty (60) days from the filing thereof), or becomes insolvent, becomes subject to direct control of a trustee, receiver or similar authority, or makes an assignment for the benefit of creditors; or (c) the Breaching Party commits a material breach of any of its obligations under this Agreement and has not cured such breach within fifteen (15) days after receipt of a written notice from the other Party specifying the nature of such material breach. The enumeration of the foregoing remedies shall not be deemed a waiver of any other remedies to which a Party is legally entitled.

## ARTICLE VII. OTHER AGREEMENTS

SECTION 7.01      Expenses. Except as otherwise specified in this Agreement, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial

advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses; provided that the foregoing shall not be deemed a waiver of any claim and/or remedy which a Party would otherwise be entitled to pursue for costs or expenses incurred as a result of a breach of this Agreement by the other Party. Prior to incurring any costs that are reimbursable by MTPC, the Company shall provide to MTPC a written estimate of the amount of any such costs, and the Parties shall work together to reach agreement on the specifics of the performance of the tasks that result in such reimbursable costs and on the amount of such costs. MTPC has agreed to grant the Company an amount not to exceed \$30,000 to reimburse the Company for costs incurred by the Company directly related to the implementation, branding and marketing activities identified in Exhibit C, Promotion Budget and Activities for the Initial Implementation Phase. MTPC agrees to review requests for reimbursement of costs submitted by the Company and to notify the Company within twenty (20) days of receipt of such requests the amount of such costs that shall be reimbursed. MTPC agrees to make disbursements to provide any such reimbursement to the Company within thirty (30) days of receipt of the request for reimbursement from the Company.

SECTION 7.02      Registered Service Mark License. The Company hereby acknowledges and agrees, that MTC is the owner of the mark “**CLEAN ENERGY CHOICE®**,” and MTC hereby grants to the Company a limited, royalty-free, non-exclusive license to use the mark “**CLEAN ENERGY CHOICE®**” alone or in conjunction with other marks or logos of the Company, in the advertisement and promotion of MTPC’s **CLEAN ENERGY CHOICE®** Program in connection with the Western Massachusetts Power of Green Project Fund Program; provided that the Company shall comport itself in accordance with reasonable standards of

business conduct, shall refrain from all activity or conduct that reflects adversely upon the goodwill associated with the “**CLEAN ENERGY CHOICE®**” mark, and shall comply with all of the terms of this Agreement as well as with all laws and regulation applicable to its business. The Company acknowledges that it has not acquired and shall not acquire any rights in the mark “**CLEAN ENERGY CHOICE®**” and it further acknowledges that all use this mark, whether alone or as part of any other mark or name, by the Company is strictly prohibited except as permitted hereunder and that any permitted use of the mark “**CLEAN ENERGY CHOICE®**” shall inure to the benefit of MTC. The license granted by this Agreement shall terminate either (a) upon termination of this Agreement, or (b) upon the Company’s material breach of or default with respect to any of its obligations or covenants under this Agreement, if such breach is not cured within fifteen (15) days following receipt of MTPC written notice of such default. The Company agrees that it shall terminate all use of the mark “**CLEAN ENERGY CHOICE®**” upon termination of the license granted by this Agreement.

SECTION 7.03      Notices. All notices, approvals, requests, claims, demands, consents and other communications hereunder (collectively, “Notices”) shall be in writing, addressed to the receiving Party's address set forth below or to such other address as a Party may designate by Notice in accordance with this Section 7.01, and shall be either (i) delivered by hand, (ii) made by facsimile transmission, or (iii) sent by overnight courier. All Notices shall be deemed to have been given either (a) if by hand, at the time of actual delivery to the receiving Party, (b) if by facsimile, at the time that receipt has been acknowledged by electronic confirmation or otherwise, or (c) if by overnight courier, on the business day following the day notice is delivered to the courier service. All such Notices shall be given or made to the respective parties hereto at the following addresses:

if to the Company:

Name: Stephen H. Klionsky

Title: Senior Counsel

Address: 100 Summer St., 23 Floor  
Boston, MA 02110

Fax: 617-345-1148

Phone: 617-345-1066

Email: klionsh@nu.com

with a copy to:

Name: Kathleen C. Disch

Title: Manager, Business Planning & Community Development

Address: 1 Federal St. Bldg 111-4  
Springfield, MA 01105

Fax: 413-787-9082

Phone: 413-787-9148

Email: dischkc@nu.com

if to MTPC:

Matthew L. Schemmel

Title: Associate General Counsel

Address: Massachusetts Technology Park Corporation  
75 North Drive  
Westborough, MA 01581

Fax: 508-898-2275

Phone: 508-870-0312

Email: schemmel@masstech.org

with a copy to:

Name: Martha Broad

Title: Manager, Renewable Energy Markets

Address: Massachusetts Technology Park Corporation  
75 North Drive  
Westborough, MA 01581

Fax: 508-898-2275

Phone: 508-870-0312

Email: broad@masstech.org

SECTION 7.04      Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 7.05      Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under applicable law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

SECTION 7.06      Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Company and MTPC with respect to the subject matter hereof.

SECTION 7.07      Assignment. Neither this Agreement nor any rights granted hereunder may be assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) without the express written consent of the Company and MTPC, which consent shall not be unreasonably withheld. Each Party shall bear its own costs in connection with any assignment or attempted assignment hereunder.

SECTION 7.08      No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity that is not a party hereto, any legal or equitable right, benefit or remedy of any nature whatsoever.

SECTION 7.09      Amendment and Waiver. This Agreement may not be amended or modified except by an instrument in writing signed by, or on behalf of, the Company and MTPC. No delay by a Party in enforcing any of its rights hereunder shall be deemed a waiver of such rights, nor shall a waiver of one default be deemed a waiver of any other or subsequent default. Any waiver by a Party of any of its rights under this Agreement shall only be effective if set forth in a writing signed by, or on behalf of, such Party.

SECTION 7.10      Governing Law; Waiver of Jury Trial. This Agreement shall be construed under, and governed by, the laws of The Commonwealth of Massachusetts, without regard to principles of conflicts of law. Subject to the requirements of Sections 7.11 and 7.12 below, the Company agrees to bring any federal or state legal proceedings arising under this Agreement in which The Commonwealth of Massachusetts or MTPC is a party in a court of competent jurisdiction within The Commonwealth of Massachusetts. This paragraph shall not be construed to limit any other legal rights of the Parties. THE COMPANY AND MTPC EACH WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

SECTION 7.11      Arbitration Proceedings. The Company and MTPC mutually agree to submit a dispute or need of interpretation arising out of this Agreement to binding arbitration. Any arbitration under this Agreement will be initiated by written request of either the Company or MTPC. Copies of any such request will be served on the other Party, and will specify the issue or issues in dispute and summarize the Party's claim with respect thereto. Within ten (10) business days after receipt of such a request, authorized representatives of the Parties will confer and attempt to agree upon appointment of a single neutral arbitrator. If such agreement is not accomplished within ten (10) business days after receipt of such a request, any Party may request the American Arbitration Association ("AAA") to administer the arbitration and to appoint an arbitrator in accordance with its Commercial Arbitration Rules, which rules will govern the conduct of the arbitration in the absence of contrary agreement by the Parties. Within five (5) business days of the appointment of an arbitrator, either Party may object to the appointment on the grounds that the arbitrator selected does not meet the criteria set forth in this Section 7.11, by filing a written notice of objection with the AAA, whereupon the AAA shall appoint a different arbitrator. Such dispute or need for interpretation shall be submitted to one arbitrator who has not previously been employed by either Party, is qualified by education or experience to decide the matters relating to the questions in dispute, and does not have a direct or indirect interest in either such Party or the subject matter of the arbitration. Such arbitration shall be held in Boston, Massachusetts or at such other location as the Parties shall mutually agree. The commercial arbitration rules of the AAA shall apply to the extent not inconsistent with the rules herein specified. The commercial arbitration rules may be varied by mutual agreement of the Parties. The arbitration shall be conducted according to the following: (a) the hearing shall be conducted without continuance or adjournment, (b) at the conclusion of the hearing, each Party will present



a suggested resolution to the arbitrator; (c) the arbitrator may select either suggested resolution or may make his or her own decision, subject to the limitation that the decision must resolve the dispute in a manner consistent with the intent of the Parties as reflected in the terms of this Agreement; (d) within one hundred twenty (120) days of the arbitrator's appointment, unless such time is extended by agreement, the arbitrator shall issue a written opinion containing his or her decision stating separately findings of fact and determinations of law; (e) the arbitrator shall decide how the expenses of arbitration, including those of counsel, are to be allocated among the Parties, and shall clearly indicate which Party or Parties prevailed in the proceeding and, if applicable, on which issues; and (f) any offer made or the details of any negotiation regarding the dispute prior to arbitration and the cost to the Parties of their representatives and counsel shall not be admissible. The arbitrator shall not have the power to modify or amend this Agreement. Subject to such limitation, the decision of the arbitrator shall be binding except that either Party may petition a court of competent jurisdiction for review of errors of law.

SECTION 7.12      Binding Nature of Proceedings. Each of the Company and MTPC understands that this Agreement contains an agreement to arbitrate any dispute or need of interpretation related to this Agreement. Each of the Company and MTPC agrees to submit any such dispute to an impartial arbitrator in accordance with the provisions of Section 6.11 above. The Party in whose favor such monetary award is made may enforce any monetary award of the arbitrator in a court of competent jurisdiction.

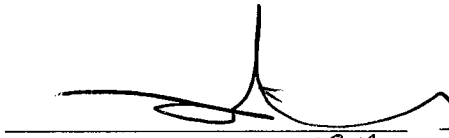
SECTION 7.13      Time of Essence. Time is of the essence for the performance of all obligations of the Parties under this Agreement.

SECTION 7.14      Counterparts. This Agreement may be executed in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Company and MTPC have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

MASSACHUSETTS TECHNOLOGY PARK CORPORATION

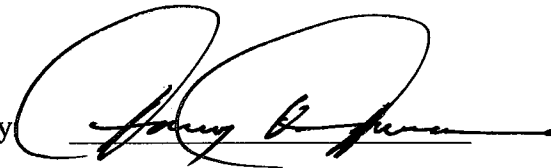
(as administrator of the Massachusetts Renewable Energy Trust Fund)

By:   
29 August, 2006

Name: Mitchell Adams

Title: Executive Director

WESTERN MASSACHUSETTS ELECTRIC COMPANY

By: 

Name: Rodney O. Powell

Title: President & COO

## **EXHIBIT A**

### **IRS PRIVATE LETTER RULING**

#### **Internal Revenue Service**

Department of the Treasury  
Washington, D.C.

Index Numbers: 7701.20-00  
0170.07-05

#### **Mr. Philip F. Holahan**

Deputy Director  
Seventy Five North Drive  
Massachusetts Renewable Energy Trust Fund  
Westborough, MA 01581-3340

#### **Person to Contact:**

Carolyn Cook (ID# 50-014970)  
Telephone Number:  
(202) 622-6010  
Refer Reply to:  
CC:TE/GE:E02 PLR-107386-01  
Date: July 3, 2001

#### **LEGEND**

Fund = Massachusetts Renewable Energy Trust Fund  
Corporation = Massachusetts Technology Park Corporation EIN: 04-2773673  
State = Massachusetts  
Act \_A = Massachusetts General Laws ch. 40J (Law. Co-op. 1993 & Supp. 2001)  
Act B  
Massachusetts General Laws ch. 25  
§ 20 (Law. Co-op. 1996 & Supp. 2001)  
year a = 1982  
year b = 1984  
year c = 1991  
year d = 1997  
e = \$ 20, 000, 000 f = \$0.0005 g = \$0.00025  
h = \$ 150,000,000  
i = \$ 50, 000, 000  
Program = Massachusetts Cleaner Energy Choice Program

Dear Mr. Holahan:

This is in reply to a letter from your representative dated January 26, 2001, requesting a ruling that Fund is an integral part of State and that certain payments to Fund made by consumers pursuant to Program will be deductible by them as charitable contributions under § 170 of the Internal Revenue Code.

#### **FACTS**

Corporation was created in year a by Act A. Its purpose, as originally enacted, was to establish and operate one or more educational centers. The centers were intended to provide advanced education and practical training in emerging areas of science and technology in order to satisfy the education and employment needs of the state.

According to Act A, Corporation is a body, politic and corporate. It is placed in State's department of economic development but is not subject to the supervision or control of this department. Instead, Act A

provides that Corporation is governed by a board of directors which consists of three state officials, four members selected from a list of persons nominated by the State legislature and sixteen members appointed by the governor. Any director may be removed by the governor for cause. With certain exceptions, the state statute regulating the conduct of public officials and employees applies to the directors, officers and employees of Corporation. In addition, the State statute governing public authorities and public agencies with respect to fraud and waste apply to Corporation.

In year b, Act A was amended to provide \$ e in state funds as State's contribution to the first education center established by Corporation. The books and records of Corporation are subject to an annual audit by the auditor of State. Act also requires Corporation to submit an annual report to the State legislature.

In year c, Act A was amended again. These amendments changed the purpose of Corporation. They directed Corporation to make the education center self-sufficient of regular, annual public maintenance funding. Instead, they authorized Corporation to aggressively use the resources of the center to directly support technology firms to maintain, expand and locate their business activities with the state, thereby increasing employment opportunities for the citizens of the state. The year c amendments also contained provisions allowing the formation of one or more technology partnerships with interested industrial firms and universities, the federal government and venture capital firms for the purpose of fully exploiting the substantial resources of the education centers. Such technology partnerships may involve the lease or licensing of all or part of the facilities, intellectual property or related resources, the furnishing of design and/or fabrication services, cooperative technology development and technology-sharing arrangements. Included in the amendments made to Act A in year c was a provision requiring that all income of Corporation be held and applied solely to accomplish the essential governmental functions of Corporation. In addition, the amendments include a provision that no income of Corporation shall accrue to any private individual or organization, and that upon dissolution of Corporation all of its assets shall be returned to the State.

## **Fund**

Fund was created pursuant to an amendment to Act A in year d. Fund is a separate trust fund set up on the books of Corporation. Corporation is required to credit to Fund all amounts collected pursuant to Act B, also enacted in year d, and any income derived from the investment of amounts credited to Fund. All amounts credited to Fund are to be held in trust and used solely for activities consistent with the public purpose of Fund. The purpose of Fund is to promote the availability and use of renewable energy. Renewable sources are certain sources other than coal, oil, natural gas except when used in fuel cells, and nuclear power. According to Act A, as amended in year d, Fund is to accomplish its purpose by, among other things, the stimulation of increased public and private sector investment, and the stimulation of entrepreneurial activities in these and related enterprises, institutions, and projects. In furtherance of these purposes the board of Corporation is permitted to expend monies from the fund to make grants, contracts, loans and equity investments or rebates to customer or take any other actions it deems appropriate.

The governor of State shall, from the recommendation submitted by the chairman of the board of Corporation, appoint an advisory committee to assist Corporation in matters related to Fund. The advisory committee includes no more than 15 individuals with an interest in and knowledge and experience in related areas. The board shall consult with the advisory committee in discharging its obligations with respect to Fund. The books and record of Corporation relative to expenditures and investments of monies from Fund are subject to a biennial audit by the auditor of State. The board of Corporation, in conjunction with the advisory committee, is required to annually submit to the governor, to certain state committees, and to the state legislature, a report detailing the expenditure and investments of monies from Fund, as well as any recommendations for improving the ability of the Corporation, the board of Corporation, and Fund to meet the requirements and provisions of section of Act relating to Fund.

The board of Corporation is required, in consultation with the State division of energy and the advisory committee of Fund, to adopt a plan for the application of Fund to support a renewable energy program, subject to periodic revision by the board, that ensures the Fund will be employed to provide financial and non-financial resource to overcome barriers facing renewable energy enterprises, institutions and projects. Subject to the approval of the board of Corporation, investment activity of monies from Fund may include an equity fund, to provide risk capital to renewable energy enterprises, institutions, and projects.

In State, customers obtain electricity at the retail level either from investor owned utility companies or from municipally owned plants. The municipally owned plants are subject to substantially less state regulation. Act A, as amended in year d, was enacted to replace certain privileges enjoyed by investor owned utility companies in State under the prior regulatory system. Pursuant to Act B, certain charges are collected by

the investor owned utility distribution companies and remitted to Corporation which deposits the charges into Fund. Corporation is charged with administering Fund consistent with the public purposes for which the charges were enacted, as provided in Act B.

The relevant provision of Act B imposes two charges. The first charge, the renewable energy charge, is approximately \$ f per kilowatt hour. Its purpose is to support the development and promotion of renewable energy projects in accordance with Act A. The second charge, the waste-to-energy charge, is \$ g per kilowatt hour of electricity. Its purpose is to provide grants to municipalities and certain other entities with existing renewable energy facilities that use waste-to-energy technology in municipal solid waste plants to pay for pollution control technology or to close the facility. Fund represents that the renewable energy charge is expected to generate approximately \$ h over the first five years, and the waste-to-energy charge is expected to generate approximately \$i. Act A provides that the waste-to-energy charge must be especially segregated in Fund and used only for the purposes specially designated by Act A for this charge. Although the charges are imposed by the State legislature on the customers of investor owned utilities and, in certain cases, on the customers of municipally owned plants, in practice, the charges falls only on the customers of investor owned plants. These charges do not constitute fees in exchange for services.

Fund established Program to support and encourage the development of power from renewable sources. Fund represents that under Program, consumers make donations to Fund on their monthly electric statements. In addition to their payment for the billed cost of standard power for their own account, a consumer will be able to elect to donate to the Fund an amount equal to the incremental cost of a corresponding amount of various types of power from renewable sources. Alternatively, the consumer's monthly statement will indicate that they can donate to Fund by overpaying their bills by \$1, \$5, \$10 or more with the amount designated going to Fund. These amounts are collected by the utility company and transferred to Corporation on a monthly basis for deposit in Fund.

Fund represents that it will make payments to certain qualifying consumers on the condition that they agree to purchase power from renewable sources. The amount of the payment corresponds to the incremental cost of the type of renewable source energy they choose to receive from Program. In fact, the qualifying consumers receive the same power at the same rates whether or not they receive a payment as a qualifying consumer from Program. Due to the nature of the power grid, consumers who pay for renewable power do not necessarily actually receive power from renewable sources because electricity delivered to customers cannot be physically traced to a specific generation asset. When customers buy a specific, grid-delivered power product they do not physically receive specific electrons. Instead, their generator of choice simply adds the electrons demanded to the entire power pool, which are then delivered to all customers indiscriminately. Thus, the sole consequence of a renewable source purchase by a qualifying consumer is to cause more renewable energy to be added to the pool of energy available to everyone through the power grid.

## **LAW & ANALYSIS**

### *Integral Part*

Generally, if income is earned by an enterprise that is an integral part of a state or political subdivision of a state, that income is not taxable in the absence of specific statutory authorization to tax that income. See Rev. Rul. 87-2, 1987-1 C.B. 18; Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29.

In Maryland Savings-Share Ins. Corp. v. United States, 308 F. Supp. 761 (D. Md. 1970), rev'd on other grounds, 400 U.S. 4 (1970) (MSSIC), the State of Maryland formed a corporation to insure the customer accounts of state chartered savings and loan associations. Under MSSIC's charter, the full faith and credit of the state was not pledged for MSSIC's obligations. Only three of eleven directors were selected by state officials. The district court rejected MSSIC's claim of intergovernmental tax immunity because the state made no financial contribution to MSSIC and had no present interest in the income of MSSIC. Thus, the imposition of an income tax on MSSIC would not burden the State of Maryland. Although the Supreme Court reversed the lower court on other grounds it agreed with the lower court's analysis about the treatment of state created enterprises.

In State of Michigan and Michigan Education Trust v. United States, 40 F. 3d 817(6 th Cir. 1994), re'g 802 F. Supp. 120 (W.D. Mich. 1992), the court held that the investment income of the Michigan Education Trust (MET) was not subject to current taxation under section 11(a). The court's opinion is internally inconsistent because it concludes that MET qualifies as a political subdivision of the State of Michigan (Id. at 825), that MET is "in a broad sense" a municipal corporation (Id. at 826), and that MET is in any event an integral part of the State of Michigan (Id. at 829). Moreover, the

court's reliance on the factors listed in Rev. Rul. 57-128, 1957-1 C.B. 311, to reach its conclusion is misplaced. The revenue ruling applies to entities that are separate from the state. The factors in the revenue ruling do not determine whether an enterprise is considered to be a separate entity or an integral part of the state.

Section 301.7701-1 et seq. of the Procedure and Administration Regulations, the so-called "check-the-box" regulations, support the position that an entity that is recognized as separate from a state or political subdivision for local law purposes may still be an integral part of that state political subdivision. Section 301.7701-1(a) provides, in part, that an entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State.

In determining whether an enterprise is an integral part of the state, it is necessary to consider all of the facts and circumstances, including the state's degree of control over the enterprise and the state's financial commitment to the enterprise.

#### *Corporation*

The control State exercises over Corporation is substantial. According to Act A, Corporation's board of directors consists of three state officials, four directors chosen from a list submitted by the legislature, and sixteen directors elected by the governor. The directors can be removed by the governor for cause, and are subject to many of the state statutes regulating the conduct of public employees. Corporation was created by state legislation and placed in the State department of economic development. The books and records of Corporation are subject to an annual audit by the auditor of State. Act A also requires Corporation to submit an annual report to the State legislature. The financial commitment State has made to Corporation is also substantial. In year b. State provided \$ e in state funds as State's contribution to the first education center established by Corporation. State's contribution to Corporation represents a substantial portion of the net worth of Corporation.

Accordingly, after considering the financial commitment that State has made to Corporation and the degree of control exercised over Corporation by State, we conclude that Corporation is an integral part of State.

#### *Fund*

The control State exercises over Fund is also substantial. Fund was created when the state legislature amended Act A, the statute which created Corporation. According to Act A, as amended, Fund is subject to the control of Corporation's board of directors. In addition, Fund has its own advisory board, consisting of fifteen members appointed by the governor. The board consults with the advisory committee in discharging its obligations with respect to Fund. The books and record of Corporation relative to expenditures and investments of monies from Fund are subject to a biennial audit by the auditor of State. The board of Corporation, in conjunction with the advisory committee, is required to submit to the governor, certain state committees, and the state legislature, a report detailing the expenditure and investments of monies from Fund. The financial commitment State has made to Fund is also substantial. State has assessed charges on the end users of electrical power distributed by private utility companies. The charge is not a fee in exchange for services. Fund is used for programs that benefit equally the entire populace of State. Approximately \$ h will be turned over to Corporation to deposit in Fund, as mandated by state legislation. This constitutes a substantial portion of Fund's net worth.

Accordingly, after considering the financial commitment that State has made to Fund and the degree of control exercised over Fund by State, we conclude that Fund is an integral part of State.

#### *Section 170*

Section 170(a)(1) of the Code provides, subject to certain limitations, a deduction for contributions or gifts to or for the use of organizations described in § 170(c), payment of which is made within the taxable year.

Section 170(c)(1) of the Code states that the term "charitable contribution" includes a contribution or gift to or for the use of a State, a possession of the United States, any political subdivision of a State or any possession of the United States, or the District of Columbia, but only if the contribution is made for exclusively public purposes.

In this case, consumers will make contributions or gifts to Fund pursuant to Program. Since Fund is an

integral part of State, contributions or gifts to or for the use of Fund are to or for the use of an entity described in § 170(c)(1) of the Code. Accordingly, contributions or gifts to or for the use of Fund are to or for the use of State and, provided they are made for exclusively public purposes, are generally deductible under § 170(c)(1) to the extent otherwise allowed by § 170.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

Sincerely,

Elizabeth Purcell, Chief  
Exempt Organizations  
Branch 2  
Division Counsel/Associate Chief Counsel  
(Tax Exempt and Government Entities)

Enclosures:  
Copy of this letter  
Copy for § 6110 purposes

CC: Allen Jones  
Director, Federal, State and Local Governments T:GE:FSL  
1111 Constitution Ave. NW Washington D.C. 20224

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Department of the Treasury  
Notice 437

Internal Revenue Service  
OMB No. 1545-0633

**Notice of Intention to Disclose**

Taxpayer name  
Mailing date of this notice: JUL 12 2001  
Last date to request IRS review: AUG 1 2001  
Last date to request delay: SEP 10 2001  
Last date to petition Tax Court: SEP 10 2001  
Date open to public inspection: OCT 5 2001

Section 6110 of the Internal Revenue Code provides that copies of certain rulings, technical advice memoranda, and determination letters will be open to public inspection after deletions are made. Rulings and technical advice memoranda will be open to public inspection in the Freedom of Information (FOI) Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, where they may be read and copied by anyone interested.

In accordance with section 6110, we intend to make the enclosed deleted copy of your ruling open to public inspection. We made the deletions indicated in accordance with section 6110(c), which requires us to delete:

1. The names, addresses, and other identifying details of the person the ruling pertains to, and of any other person identified in the ruling (other than a person making a "third party communication"-see back of this notice).
2. Information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and which is in fact properly classified under such Executive Order.

3. Information specifically exempted from disclosure by any statute (other than the Internal Revenue Code) which is applicable to the Internal Revenue Service.
4. Trade secrets and commercial or financial information obtained from a person that are privileged or confidential.
5. Information which would constitute a clearly unwarranted invasion of personal privacy.
6. Information contained in or related to examination, operating, or condition reports prepared by, or for use of an agency that regulates or supervises financial institutions. ,
7. Geological and geophysical information and data (including maps) concerning wells.

These are the only grounds for deleting material. We made the indicated proposed deletions after considering any suggestions for deletions you may have made prior to issuance of the ruling

**If You Agree** with the proposed deletions you don't need to take any further action. We will place the deleted copy in the National Office FOI Reading Room on the "Date Open to Public Inspection" shown on this notice.

**If You Disagree** with the proposed deletions, please return the deleted copy and show, in brackets, any additional information you believe should be deleted. Include a statement supporting your position. Only material falling within the seven categories listed above may be deleted. Your statement should specify which of these seven categories is applicable with respect to each additional deletion you propose. Send your deleted copy and statement to:

Internal Revenue Service  
Attention: CC:PA:T  
Ben Franklin Station  
Post Office Box 7604  
Washington, DC 20044

It must be postmarked no later than the "Last Date to Request IRS Review" shown on this notice. We will give your submission careful consideration. If we feel we cannot make any or all of the additional deletions you suggest, we will so advise you no later than 20 days after we receive your submission. You will then have the right to file a petition in the United States Tax Court if you disagree with us. Your petition must be filed no later than the "Last Date to Petition Tax Court" shown on this notice, which is 60 days after the mailing date of this notice. If a petition is filed in the Tax Court, the disputed portion(s) of the ruling won't be placed in the Reading Room until after a court decision becomes final.

If no petition is filed in the Tax Court, the deleted copy of your ruling will be made open to public inspection on the date shown on this notice. If the transaction to which the ruling relates will not be completed by then, you may request a delay of public inspection. \_

#### **Request for Delay of Public Inspection**

You may request a delay of public inspection of up to 90 days, or 15 days after the transaction is completed, whichever is earlier. The request for delay must be received by the IRS no later than the "Last Date to Request Delay" shown on this notice, which is 60 days after the mailing date of this notice. Send your request for delay to:

Internal Revenue Service  
Attention: CC:PA:T  
Ben Franklin Station



Post Office Box 7604  
Washington, DC 20044

You may request a second delay of up to an additional 180 days (or 15 days after the completion of the transaction, whichever is earlier) if the transaction is not completed by the end of the original delay period and if good cause exists for additional delay. We must receive a request for a second delay at the above address at least 30 days before the original delay period ends.

### **Additional Disclosure**

After the deleted copy of your ruling is placed in our Reading Room, any person may request us to make additional portions of the ruling open to public inspection. If we receive a request that involves disclosure of names, addresses, or taxpayer identifying numbers, we will deny the request and you won't be contacted. If that request involves disclosure of anything other than names, addresses, or taxpayer identifying numbers, we will contact you before taking action.

### **Third Party Communications**

The enclosed deleted copy of your ruling may contain the notation "Third Party Communication." This indicates that IRS received a communication (written or oral) regarding your ruling request from a person outside the IRS (other than you or your authorized representative). The date of the communication and the category of the person making the contact (such as "Congressional" or "Trade Association") will be indicated.

**If You Have Any Questions** regarding this notice, please contact:

Internal Revenue Service  
Attention: CC:PA:T  
Ben Franklin Station  
Post Office Box 7604  
Washington, DC 20044  
(202) 622-7570

**Paperwork Reduction Act Notice** -You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103. The time needed to provide information if you disagree with the proposed deletions will vary depending on individual circumstances. The estimated average time is 30 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this notice simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. Do not send your submission to this address. Instead, send it to: **Internal Revenue Service**, Attention: CC:PA:T, Ben Franklin Station, Post Office Box 7604, Washington, DC 20044

## EXHIBIT B

### CLEAN ENERGY CHOICE®: Western Massachusetts Power of Green

#### Project Fund Program Disclosure Standards

##### General

1. All Customer Materials must conform to all applicable requirements/standards specified in the following:
  - a. Massachusetts General Laws;
  - b. Regulations promulgated by the Massachusetts Attorney General;
  - c. Any order or regulation of the Massachusetts Department of Telecommunications and Energy;

##### Specific

2. Any Customer Materials, public statements, or media interviews by the Company that reference the **CLEAN ENERGY CHOICE®** Program in connection with the WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND must include language describing the **CLEAN ENERGY CHOICE®** Program. Depending upon the nature and length of the materials, the language of the description of the program should vary in length.
  - a. Customer Materials must describe the payments made by the customer in connection with the WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND PROGRAM as contributions made to MTPC's **CLEAN ENERGY CHOICE®** WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND to be used by MTC to fund the development of a renewable electricity-generating project(s) to benefit low-income residents or appropriate non-profit agencies.
  - b. Customer Materials must describe the tax-deductibility of payments made by the customer in connection with Western Massachusetts Power of Green Project Fund as being the result of the customer having made a contribution to MTC's **CLEAN ENERGY CHOICE®** WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND.
  - c. Any Customer Materials, public statements, or media interviews by WMECo that reference the WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND must include language describing the **CLEAN ENERGY CHOICE®** Program. Depending upon the nature and length of the materials, the language of the **CLEAN ENERGY CHOICE®** Program should vary in length.
    - i. For press releases, public statements, and media interviews that discuss the WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND PROGRAM, the following language must be included:

“The WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND is part of the **CLEAN ENERGY CHOICE**<sup>®</sup> Program of the Massachusetts Technology Collaborative (MTC), a public agency of the Commonwealth and administrator of the Renewable Energy Trust. Through **CLEAN ENERGY CHOICE**<sup>®</sup>, MTC matches ratepayers’ contributions with clean energy funds for their communities and also puts an amount equivalent to all ratepayer contributions into the Fund.”

- ii. For brief materials (e.g., press releases, one-sided flyers, and documents of under 500 words) in which the tax deduction is mentioned, it must be described in the following way:

“The WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND is part of the **CLEAN ENERGY CHOICE**<sup>®</sup> program of the Massachusetts Technology Collaborative (MTC), a public agency of the Commonwealth and administrator of the Renewable Energy Trust. 100% percent of your contribution to the WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND is recognized as a tax-deductible charitable contribution to MTC for federal income tax purposes. More information can be found at [www.CleanEnergyChoice.org](http://www.CleanEnergyChoice.org).”

- d. The Company’s informational website, pamphlets, brochures, and other longer documents that discuss the WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND must prominently include the following language:

“[MCEC utility participant] is participating in **CLEAN ENERGY CHOICE**<sup>®</sup>, allowing you to make a tax deductible contribution to the Western Massachusetts Power of Green Project Fund. Through this program, MTC collects ratepayer contributions to the Fund and uses these contributions for the development of a renewable energy project in Western Massachusetts. This project will benefit low income residents and/or appropriate non-profit agencies. The Massachusetts Technology Collaborative (“MTC”), a public agency of the Commonwealth and administrator of the Renewable Energy Trust, created this program with assistance from WMECO. 100% of these ratepayer contributions go into the Western Massachusetts Power of Green Project Fund.

In addition, MTC will provide:

- a match equal to your payment(s) for the Western Massachusetts Power of Green Project Fund.
- a match equal to your payment(s) for your city or town for clean energy goods and services.

Consumers can choose to have their contributions for Western Massachusetts renewable energy projects recognized as charitable donations to the MTC for federal income tax purposes. More information can be found at [www.CleanEnergyChoice.org](http://www.CleanEnergyChoice.org).

- e. The Company and MTPC shall collaborate to prepare any press release and to plan for any news conference in which the **CLEAN ENERGY CHOICE**<sup>®</sup> Program is concerned or discussed. Any public statement or media interview by the Company that discusses the **CLEAN ENERGY CHOICE**<sup>®</sup> Program shall include the following statement (or an abbreviated version thereof):

The **CLEAN ENERGY CHOICE**<sup>®</sup> program is a program of the Massachusetts Technology Collaborative (MTC), a public agency of the Commonwealth and administrator of the Renewable Energy Trust.

provided, however, that the Company may use other language with respect to MTPC's role only with the express written consent of MTPC.

## EXHIBIT C

### POWER OF GREEN PROMOTION BUDGET AND PROMOTION SCHEDULE: INITIAL IMPLEMENTATION PHASE

POWER OF GREEN <i>A Clean Energy Choice<sup>SM</sup> Program</i>							
Estimated Promotional Costs - Initial Implementation							
	Outside Cost	Piece Cost	# Pieces	Postage	BRM Cost	# Mail Drops	Extension
Register "Power of Green" name	\$ 2,000						\$ 2,000
Graphic design and artwork	\$ 2,000						\$ 2,000
Bill message			180,000				—
Annual direct mail brochure, envelope, return envelope		\$ 0.40	30,000	\$ 0.39	\$ 234.00	1	\$ 23,934
Mail response envelope to participant		\$ 0.20	600	\$ 0.39	\$ 1,170.00	5	\$ 2,940
<b>Total Promo Costs for Initial Implementation Phase</b>							<b>\$ 30,874</b>

POWER OF GREEN																														
A Clean Energy Choice <sup>SM</sup> Program																														
Initial Implementation Promotional Schedule																														
Action	October					November					December					January-07					February					March				
	2	9	16	23	30	6	13	20	27	4	11	18	25	1	8	15	22	29	5	12	19	26	5	12	19	26				
Research Power of Green name																														
Register Power of Green name																														
Design brand image																														
Develop DM copy																														
Design DM artwork																														
Run bill message																														
Produce DM																														
Pull mailing list																														
Drop direct mail																														
Mail response envelope																														
Develop website content																														

**EXHIBIT D**  
**POWER OF GREEN PROMOTION BUDGET AND PROMOTION SCHEDULE:**  
**FULL IMPLEMENTATION PHASE**

POWER OF GREEN A Clean Energy Choice <sup>SM</sup> Program Estimated Promotional Costs - Full Implementation						
Ongoing Promotion	Outside Cost	Piece Cost	# Pieces	Postage	# Mail Drops	Extension
-Bill message			180,000			\$ -
-Graphic design update	\$ 1,500					\$ 1,500
-2 pg/4-color bill insert - Month TBD*			180,000		1	\$ 2,025
-4 pg/4-color bill insert - 2 Months TBD*			50,000		2	\$ 2,894
Events - Home Show; Local Energy Fairs	\$ 3,500					\$ 3,500
Website promotion	\$ 500					\$ 500
<b>Total Ongoing Promotion Costs for Power of Green</b>						<b>\$ 10,419</b>

POWER OF GREEN A Clean Energy Choice <sup>SM</sup> Program Full Implementation Promotional Schedule 2007																																												
Action	March			April			May			June			July			August			September			October			November			December																
	6	12	19	26	2	9	16	23	30	7	14	21	28	4	11	18	25	2	9	16	23	30	6	13	20	27	3	10	17	24	1	8	15	22	29	5	12	19	26	3	10	17	24	31
Post website content																																												
Design bill inserts																																												
Inform participants to pay on bill																																												
Mail 2 panel bill insert																																												
Mail 4 panel bill insert																																												
Run bill message																																												
Event																																												



## **EXHIBIT E**

### **WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND**

#### **PROGRAM ENROLLMENT AND**

#### **REMITTANCE HANDLING PROCESS FOR INITIAL IMPLEMENTATION PHASE**

Western Massachusetts Electric Company (WMECO) will solicit and enroll customers in the Western Massachusetts Power of Green Project Fund. WMECO acts as an agent for the MTPC to collect and forward voluntary customer contributions to the Western Massachusetts Power of Green Project Fund, following the process outlined here. WMECO will set up a separate Power of Green Project Fund accounting to hold customer contributions until they are forwarded to the MTPC.

1. Direct mail solicitation is sent to customer.

1.1. Mailer includes a tear-off sign-up form with the following language allowing WMECO to forward to the MTPC the customer's name, address, voluntary contribution pledge, and amount of enclosed and future contributions to the Western Massachusetts Power of Green Project Fund.

"I would like to participate in the Western Massachusetts Power of Green Project Program and contribute the amount designated below to support the development of new regional sources of energy derived from renewable resources. I understand that this is a voluntary, tax deductible contribution and I authorize Western Massachusetts Electric Company to release my name, address and amount of my contribution(s) to the Massachusetts Technology Collaborative which oversees the

Western Massachusetts Power of Green Project Fund. The Massachusetts Technology Collaborative is a state agency and subject to the Public Records Law. Therefore, your contribution amounts may be subject to public disclosure.”

1.2. Mailer includes a colored return envelope for customer to send Western Massachusetts Power of Green Project Fund contribution to WMECO

2. Promotional bill insert is included with customer’s bill.

2.1. Bill insert includes tear-off sign-up form with the following language allowing WMECO to forward to the MTPC the customer’s name, address, voluntary contribution pledge, and amount of enclosed and future contributions to the Western Massachusetts Power of Green Project Fund.

“I would like to participate in the Western Massachusetts Power of Green Project Program and contribute the amount designated below to support the development of new regional sources of energy derived from renewable resources. I understand that this is a voluntary, tax deductible contribution and I authorize Western Massachusetts Electric Company to release my name, address and amount of my contribution(s) to the Massachusetts Technology Collaborative which oversees the Western Massachusetts Power of Green Project Fund.” The Massachusetts Technology Collaborative is a state agency and subject to the Public Records Law. Therefore, your contribution amounts may be subject to public disclosure.”

2.2. Customer’s bill includes a colored return envelope for customer to send Western Massachusetts Power of Green Project Fund contribution to WMECO.

3. Colored return envelopes are received at WMECO's P.O. Box 2010 in West Springfield, separated from regular electric payment envelopes, and directed to Western Massachusetts Power of Green Project Fund Customer Service Representatives (CSRs).
4. CSRs open envelopes and data from sign-up form is entered into the WMECO Power of Green Project Fund Program database fields, enrolling customers in the program.
  - 4.1. Sign-up forms will be retained for the duration of the Agreement and for a period of seven (7) years thereafter.
5. Checks received in the Customer Service Center (CSC) during each business day are totaled, bundled, and sent by secure method to Central Cash in one shipment.
6. Upon receipt in Central Cash, checks are totaled to confirm CSC records, posted to the Power of Green Project Fund accounting record and deposited.
7. On a monthly basis, Power of Green Project Fund deposits from the 28<sup>th</sup> day of the previous calendar month to the 27<sup>th</sup> day of the current month are totaled and the resulting amount is remitted to the Massachusetts Technology Park Corporation CLEAN ENERGY CHOICE® program by the 5<sup>th</sup> day of the next month.
  - 7.1. If the 5<sup>th</sup> day of the month occurs on a Saturday, Sunday or holiday, monthly Power of Green Project Fund deposit will be received by the next business day.
8. Customer Service will submit to the MTPC a Quarterly Contribution Report no later than the 10<sup>th</sup> day of each January, April, July and October from the Power of Green Project Fund

customer database. This Report will contain the following information for each of the three preceding calendar months.

8.1. The total amount of contributions pledged by participating customers each month for the Power of Green Project Fund

8.2. The total amount of contributions received from participating customers each month for the Power of Green Project Fund

8.3. The individual participating customer name, address, amount pledged and amount received for the Power of Green Project Fund

8.4. The total amount of Power of Green Project Fund contributions received from participating customer sorted by city and town.

9. Customer Service will submit to the MTPC an Annual Contribution Report from the Power of Green Project Fund customer database no later than the 10<sup>th</sup> day of each January. This Report will contain the following information in total for the preceding twelve calendar months.

9.1. The total amount of contributions pledged by participating customers for the Power of Green Project Fund

9.2. The total amount of contributions received from participating customers for the Power of Green Project Fund

9.3. The individual participating customer name, address, amount pledged and amount received for the Power of Green Project Fund

9.4. The total amount of Power of Green Project Fund contributions received from participating customer sorted by city and town.

10. Exceptions to this process include situations where

10.1. The Power of Green Project Fund contribution is included with the customer's bill payment.

10.1.1. During Initial Implementation Phase, if the customer's Power of Green Project Fund contribution is not submitted as a separate check but included with the customer's electric payment, WMECO cannot make an assumption on disbursement and the payment overage will be credited to the customer's electric account.

10.2. The customer moves to a different location within or outside of WMECO's service area.

10.2.1. If a participating customer moves to a different city or town within WMECO's service area, a separate customer record must be started in the Power of Green Project Fund customer database to accurately capture the amount that qualifies for disbursement from the MCEC Public Good Match Program.

10.2.2. If a participating customer moves to a different location outside of WMECO's service area, they are no longer eligible to participate in the Western Massachusetts Power of Green Project Fund Program and their record in the Power of Green Project Fund customer database must be tagged as "Inactive."

## **EXHIBIT F**

### **WESTERN MASSACHUSETTS POWER OF GREEN PROJECT FUND**

#### **PROGRAM ENROLLMENT AND**

#### **REMITTANCE HANDLING PROCESS FOR FULL IMPLEMENTATION PHASE**

Western Massachusetts Electric Company (WMECO) will solicit and enroll customers in the Western Massachusetts Power of Green Project Fund. WMECO acts as an agent for the MTPC to collect and forward voluntary customer contributions to the Western Massachusetts Power of Green Project Fund, following the process outlined here. WMECO will set up Power of Green Project Fund accounting for customer contributions until they are forwarded to the MTPC.

1. Promotional bill insert is included with customer's bill.

- 1.1. Bill insert includes tear-off sign-up form with a check-off box indicating a \$5 or a \$10 monthly contribution to the Power of Green Project Fund. The bill insert also includes the following language allowing WMECO to forward to the MTPC the customer's name, address, voluntary contribution pledge, and amount of paid contributions to the Western Massachusetts Power of Green Project Fund.

"I would like to participate in the Western Massachusetts Power of Green Program and contribute the amount designated below each month to support the development of new regional sources of energy derived from renewable resources. I understand that this is a voluntary, tax-deductible contribution and that the amount of my monthly contribution will be added to my electric bill. I authorize Western Massachusetts Electric Company to release my name, address and record of my

contribution to the Massachusetts Technology Collaborative which oversees the Western Massachusetts Power of Green Project Fund.”

2. Customers may choose to make a one-time donation to the Power of Green Project Fund rather than make monthly contributions. Printed promotional material will include information on sending separate checks for the Power of Green Project Fund. Contributions other than monthly pledges included with electric bill payments will be handled in accordance with the manual contribution process outlined in Exhibit E.
3. Customers may enroll in the Power of Green Project Fund through the WMECO website. They will be offered the options of sending a one-time contribution or pledging a monthly contribution that will be included in their electric bill.
4. Customers may enroll in the Power of Green Project Fund at various events where WMECO promotes the program. Enrollment forms will be available at these events and customers will be offered the options of sending a one-time contribution or pledging a monthly contribution that will be included in their electric bill.
5. For customers who have enrolled in the Power of Green Project Fund, the total amount due on the electric bill will include all electric charges plus a line item contribution amount of \$5 or \$10, reflecting the customer’s pledge. Contributions included with electric payments will be received at WMECO’s P.O. Box 2010 in West Springfield. The contribution will be handled through designated accounting procedures and held in a WMECO account for the Western Massachusetts Power of Green Project Fund until disbursed to MTPC. Customers may make monthly \$5 or \$10 Power of Green Project Fund contribution amount pledged by the customer. If the amount remitted to WMECO varies from the total due amount which

comprises the electric charges plus the \$5 or \$10 Power of Green Project Fund Pledge line item amount, the total amount remitted by the customer will be credited towards the customer's electric bill.

6. Customers who have pledged contributions to the Western Massachusetts Power of Green Project Fund will have their accounts coded in the WMECO billing system, indicating their enrollment in the program. Customers who have enrolled in the program during Phase 1 Implementation will have this participation transferred to the new billing system, pending confirmation of the monthly pledge amount.

6.1. Sign-up forms will be retained for no less than seven (7) years from receipt.

7. On a monthly basis, Power of Green Project Fund deposits from the 28<sup>th</sup> day of the previous calendar month to the 27<sup>th</sup> day of the current month are totaled and the resulting amount is remitted to the Massachusetts Technology Park Corporation **CLEAN ENERGY CHOICE®** program by the 5<sup>th</sup> day of the next month.

7.1. If the 5<sup>th</sup> day of the month occurs on a Saturday, Sunday or holiday, monthly Power of Green Project Fund deposit will be received by the next business day.

8. Customer Service will submit to the MTPC a Quarterly Contribution Report no later than the 10<sup>th</sup> day of each January, April, July and October from the Power of Green Project Fund customer database. This Report will contain the following information for each of the three preceding calendar months.

8.1. The total amount of contributions pledged by participating customers each month for the Power of Green Project Fund



- 8.2. The total amount of contributions received from participating customers each month for the Power of Green Project Fund
- 8.3. The individual participating customer name, address, amount pledged and amount received for the Power of Green Project Fund
- 8.4. The total amount of Power of Green Project Fund contributions received from participating customer sorted by city and town.
9. Customer Service will submit to the MTPC an Annual Contribution Report from the Power of Green Project Fund customer database no later than the 10<sup>th</sup> day of each January. This Report will contain the following information in total for the preceding twelve calendar months.
- 9.1. The total amount of contributions pledged by participating customers for the Power of Green Project Fund
- 9.2. The total amount of contributions received from participating customers for the Power of Green Project Fund
- 9.3. The individual participating customer name, address, amount pledged and amount received for the Power of Green Project Fund
- 9.4. The total amount of Power of Green Project Fund contributions received from participating customer sorted by city and town.
10. Exceptions to this process include situations where

10.1. The customer moves to a different location within or outside of WMECO's service area.

10.1.1. If a participating customer moves to a different city or town within WMECO's service area, accounting procedures must be implemented to accurately capture the amount that qualifies for disbursement from the MCEC Public Good Match Program to each city or town where the customer had residence.

10.1.2. If a participating customer moves to a different location outside of WMECO's service area, they are no longer eligible for to participate in the Western Massachusetts Power of Green Project Fund .

## EXHIBIT G

### THE MASSACHUSETTS TECHNOLOGY COLLABORATIVE

#### **POLICY AND PROCEDURES REGARDING SUBMISSION OF “SENSITIVE INFORMATION”**

The Massachusetts Technology Collaborative and the Massachusetts Renewable Energy Trust which it administers (collectively referred to herein as “MTC”) are subject to the requirements concerning disclosure of public records under the Massachusetts Public Records Act, M.G.L. c. 66 (the “Public Records Act”), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, “public records” include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MTC. As a result, any information submitted to MTC by a grant applicant, recipient grantee, recipient of financial assistance, respondent to a request for response (including, but not limited to an RFQ, RFP and RFI), contractor, or any other party (collectively the “Submitting Party”) is subject to public disclosure as set forth in the Public Records Act.

The foregoing notwithstanding, "public records" do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including MTC's enabling act, M.G.L. Chapter 40J. One such exemption that may be applicable to documents submitted by a Submitting Party is for any documentary materials or data made or received by MTC that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Submitting Party, or regarding the competitive position of such Submitting Party in a particular field of endeavor (the "Trade Secrets Exemption").

*It is MTC's expectation and belief that the overwhelming percentage of documents it receives from a Submitting Party does not contain any information that would warrant an assertion by MTC of an exemption from the Public Records Act. Submitting Parties should therefore take care in determining which documents they submit to MTC, and should assume that all documents submitted to MTC are subject to public disclosure without any prior notice to the Submitting Party and without resort to any formal public records request.*

In the event that a Submitting Party wishes to submit certain documents to MTC and believes such a document or documents may be proprietary in nature and may fall within the parameters of the Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

1. At the time of the Submitting Party's initial submission of documents to MTC, the Submitting Party must provide a cover letter, addressed to MTC's General Counsel, indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that the Submitting Party contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents' disclosure, and a specific start date and end date within which the claimed exemption applies. If different exemptions, harms and/or dates apply to different documents, it is the Submitting Party's responsibility to provide detailed explanations for each such document.

2. At the time of the Submitting Party's initial submission of documents to MTC, the Submitting Party must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as "Sensitive Information." It is the Submitting Party's responsibility to ensure that all such documents are sufficiently identified as "Sensitive Information," and Submitting Party's designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

***Information submitted to MTC in any form other than a hard copy document will not be subject to the procedures set forth herein. For example, information submitted by e-mail, facsimile and/or verbally will not be subject to these procedures and may be disclosed at any time without notice to the Submitting Party.***

3. Documents that are not accompanied by the written notification to MTC's General Counsel or are not properly identified by the Submitting Party as "Sensitive Information" at the time of their initial submission to MTC are presumptively subject to disclosure under the Public Records Act, and the procedures for providing the Submitting Party with notice of any formal public records request for documents, as set forth below, shall be inapplicable.

4. At the time MTC receives documents from the Submitting Party, any such documents designated by Submitting Party as "Sensitive Information" shall be segregated and stored in a secure filing area when not being utilized by appropriate MTC staff. By submitting a grant application, request for response, or any other act that

involves the submission of information to MTC, the Submitting Party certifies, acknowledges and agrees that (a) MTC's receipt, segregation and storage of documents designated by Submitting Party as "Sensitive Information" does not represent a finding by MTC that such documents fall within the Trade Secrets Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) MTC is not liable under any circumstances for the subsequent disclosure of any information submitted to MTC by the Submitting Party, whether or not such documents are designated as "Sensitive Information" or MTC was negligent in disclosing such documents.

5. In the event that MTC receives an inquiry or request for information submitted by a Submitting Party, MTC shall produce all responsive information without notice to the Submitting Party. In the event that the inquiry or request entails documents that the Submitting Party has previously designated as "Sensitive Information", the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Submitting Party as "Sensitive Information", and that a formal, written public records request must be submitted by the requesting party to MTC's General Counsel for a determination of whether the subject documents are exempt from disclosure.

6. Upon the General Counsel's receipt of a formal, written public records request for information that encompass documents previously designated by Submitting Party as "Sensitive Information", the Submitting Party shall be notified in writing of MTC's receipt of the public records request, and MTC may, but shall not be required to provide Submitting Party an opportunity to present MTC with information and/or legal arguments concerning the applicability of the Trade Secrets Exemption or some other exemption to the subject documents.

7. The General Counsel shall review the subject documents, the Public Records Act and the exemption(s) claimed by the Submitting Party in making a determination concerning their potential disclosure.

*The General Counsel is the sole authority within MTC for making determinations on the applicability and/or assertion of an exemption to the Public Records Act. No employee of MTC other than the General Counsel has any authority to address issues concerning the status of "Sensitive Information" or to bind MTC in any manner concerning MTC's treatment and disclosure of such documents.*

*Furthermore, the potential applicability of an exemption to the disclosure of documents designated by the Submitting Party as "Sensitive Information" shall not require MTC to assert such an*

*exemption. MTC's General Counsel retains the sole discretion and authority to assert an exemption, and he may decline to exert such an exemption if, within his discretion, the public interest is served by the disclosure of any documents submitted by the Submitting Party.*

8. MTC shall provide the requesting party and Submitting Party with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.

9. In the event that MTC determines that the subject documents are exempt from disclosure, the requesting party may seek review of MTC's determination before the Supervisor of Public Records, and MTC shall notify the Submitting Party in writing in the event that the requesting party pursues a review of MTC's determination.

10. In the event the requesting party pursues a review of MTC's determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders MTC to disclose such documents to the requester, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

11. In the event that MTC determines that the subject documents are not exempt from disclosure or the General Counsel determines that, under the circumstances and in his discretion, MTC shall not assert an exemption, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

All documents submitted by Submitting Party, whether designated as "Sensitive Information" or not, are not returnable to Submitting Party.